

## **806 KAR 3:240. Corporate governance annual disclosure.**

RELATES TO: KRS 304.3-235

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.3-235 requires insurers and insurance groups to file a corporate governance annual disclosure form. This administrative regulation provides specific details on the contents of the required disclosure and incorporates a form to be utilized by reporting entities to permit efficiency in the review and submission.

Section 1. Definitions. (1) "Corporate Governance Annual Disclosure" or "CGAD" is defined by KRS 304.3-235(1)(c).

(2) "Insurance group" is defined by KRS 301.3-235(1)(a).

(3) "Insurer" is defined by KRS 304.37-010(7).

(4) "Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators, such as the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operations Officer ("COO"), Chief Procurement Officer ("CPO"), Chief Legal Officer ("CLO"), Chief Information Officer ("CIO"), Chief Technology Officer ("CTO"), Chief Revenue Officer ("CRO"), Chief Visionary Officer ("CVO"), or any other "C" level executive.

Section 2. Filing Procedures. (1) The Corporate Governance Annual Disclosure form or CGAD form shall be filed by June 1 of each calendar year in accordance with the provisions of KRS 304.3-235(3) through (6).

(2) If the CGAD is completed at the insurance group level, then it shall be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC, which is available at [www.naic.org](http://www.naic.org). In these instances, a copy of the CGAD shall also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

Section 3. Contents of Corporate Governance Annual Disclosure. (1) The CGAD description of the governance framework and structure required by KRS 304.3-235(5) shall include the following considerations: (a)

(a) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(b) The duties of the board and each of its significant committees and how they are governed, as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

(2) In accordance with KRS 304.3-235(5)(a)4., the description of the policies and practices of the most senior governing entity and significant committees shall include a discussion of the following factors:

(a) How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group.

(b) How an appropriate amount of independence is maintained on the board and its significant committees.

(c) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.

(d) How the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, for example:

1. Whether a nomination committee is in place to identify and select individuals for consideration;
2. Whether term limits are placed on directors;
3. How the election and re-election processes function; and
4. Whether a board diversity policy is in place and if so, how it functions.

(e) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs that have been put in place.

(3) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(a) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

1. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
2. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate these changes.

(b) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

1. Compliance with laws, rules, and administrative regulations; and
2. Proactive reporting of any illegal or unethical behavior.

(c) The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:

1. The board's role in overseeing management compensation programs and practices;
2. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
3. How compensation programs are related to both company and individual performance over time;
4. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
5. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
6. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(d) The insurer's or insurance group's plans for CEO and senior management succession.

(4) The description of processes required by KRS 304.3-235(5)(a)4.c. shall include a discussion of:

(a) How oversight and management responsibilities are delegated between the board, its

committees, and senior management;

(b) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks;

(c) How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

1. Risk management processes, for example, an ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act, NAIC model law III-505;

2. Actuarial function;

3. Investment decision-making processes;

4. Reinsurance decision-making processes;

5. Business strategy or finance decision-making processes;

6. Compliance function;

7. Financial reporting or internal auditing; and

8. Market conduct decision-making processes.

Section 4. Incorporation by Reference. (1) "Corporate Governance Annual Disclosure", 07/19, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (46 Ky.R. 296, 919, eff. 10-4-2019.)